



Appeal Decision

Site visit made on 3 February 2020

by A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 25 February 2020

Appeal Ref: APP/D0840/W/19/3240165

Camborne Retail Park, Trevenson Road, Camborne TR15 3PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Canynge Bicknell (Investments) Ltd against the decision of Cornwall Council.
 - The application Ref PA19/03151, dated 8 April 2019, was refused by notice dated 27 August 2019.
 - The application sought planning permission for proposed variation of condition 1 on planning permission PA18/05073, dated 14 February 2019.
 - The condition in dispute is No 1 which states that: *"The retail units shall only be used for the sale of non-food retail goods and any other products which are ancillary to the above product group, with the exception of Units 2 & 3A, as identified on plan ref. JPW1253-001, where up to 30% of the floor area in each unit may be used for the sale of food and drink (for consumption off the premises), and unit 4 which is subject to permission PA14/08911."*
 - The reason given for the condition is: *"To define the extent of the permission and to prevent other forms of retailing which may be detrimental to the vitality and viability of the town centres"*.
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Decision

1. The appeal is allowed and the planning permission Ref: PA18/05073 for variation of condition 1 in relation to decision notice PA13/00892 dated 07/03/2013: To allow 30% of floorspace in Unit 3A to be used for the sale of food at Camborne Retail Park, Trevenson Road, Camborne, TR15 3PS, is varied by deleting condition 1 and substituting for it the following condition:
 - 1) Units 1, 2, 3A & 3B (as identified on plan ref. JPW1253-002 shall only be used for the sale of non-food retail goods and any other products which are ancillary to the above product group, with the exception that up to 30% of the floor area in each unit may be used for the sale of food and drink (for consumption off the premises). The use of Unit 4 is subject to permission PA14/08911.

Application for costs

2. An application for costs was made by Canynge Bicknell (Investments) Ltd against Cornwall Council. This application is the subject of a separate Decision.

Procedural Matters

3. The revised National Planning Policy Framework (the Framework) was published in February 2019 and, as such, references to the Framework in this decision therefore reflect the revised Framework as published in February 2019.

Background and Main Issue

4. The appeal concerns units 1 and 3B of Camborne Retail Park which is located approximately 1.5km northeast of Camborne Town Centre and 3km west of Redruth Town Centre. The appeal proposal seeks to vary a condition imposed on a previous planning permission which restricted the use of units 1 and 3B for the sale of non-food retail goods. Planning history for the appeal site indicates that a recent application to varying the condition which restricted unit 3A at Camborne Retail Park to the sale of non-food retail goods, was approved by the Council¹.
5. The main issue in this appeal is the effect of the proposed variation to the disputed condition on the vitality of Camborne town centre, with reference to the sequential test relating to main town centre uses.

Reasons

6. Policy 4 of the Cornwall Local Plan Strategic Policies 2010-2030² (the Local Plan) provides that development will be permitted where it supports the vitality and viability of town centres. This policy also provides that outside of defined town centres, retail and other main town centre uses must demonstrate the application of a sequential approach. The sequential approach reflects the provisions of paragraphs 86 and 87 of the Framework.
7. Paragraph 86 of the Framework sets out the sequential test. It says that main town centre uses should be located in town centres, then in edge of centre locations and only if suitable sites are not available (or expected to become available within a reasonable period) should out of centre sites be considered. Amongst other things, paragraph 87 of the Framework says that applicants and local planning authorities should demonstrate flexibility on issues such as format and scale, so that opportunities to utilise suitable town centre or edge of centre sites are fully explored. This is supported by the guidance contained within the Planning Practice Guidance (the PPG) on Town Centres and Retail.
8. The PPG reiterates what the sequential test is and how it should be used in decision making³. In this regard, the application of the sequential test should be proportionate and appropriate for the given proposal. The checklist within the PPG emphasises the importance of flexibility in terms of suitability, format and scale.
9. Whilst I acknowledge that the Council maintains that the appeal scheme would result in additional convenience store floorspace, the evidence before me confirms that the proposal would not result in an increase in the total amount of A1 use floorspace at the appeal site, but rather seeks to utilise up to 30% of the existing retail space available at the relevant business units for the sale of

¹ Local Planning Authority Reference: PA18/05073

² Adopted November 2016

³ Paragraph: 009 Reference ID: 2b-009-20190722 and Paragraph: 011 Reference ID: 2b-011-20190722

food and drinks. By reason of the relatively modest amount of food sales proposed based upon the proportion of the retail units that would be given over to sale of food and drinks, in this instance I find that it would not be proportionate to require that the Appellant demonstrates that alternative sites could accommodate the proposal.

10. Notwithstanding the above, the Appellant has provided a retail statement which refers to a number of court judgements that confirm that it is not considered appropriate to rigidly apply the sequential test in all scenarios. Furthermore, the retail statement provided by the Appellant has considered a number of sites that it appears the Council have previously flagged up with regards to potential sites within the surrounding area. In this respect, the retail statement confirms that none of the identified sites would be suitable and available and that, consequently, the proposal could not be accommodated elsewhere.
11. The conclusions of the retail statement and its findings in relation to the sequential approach have not been disputed by the Council within their submissions. However, the Council maintain that the proposal would undermine the vitality of Camborne. In this regard, the Appellant's retail statement provides an assessment of the retail impact on the town centre viability and concludes that food sales would be ancillary to sale of non-food items and that by limiting food sales to 30% of the floor space, the proposed variation to the previously applied condition would not undermine the vitality or viability of Camborne. The evidence before me indicates that the Council's retail advisors, GVA Grimley, confirms that the proposal would have a negligible impact on Camborne and Redruth town centres and that GVA Grimley have confirmed that the proposal would not result in a significant change of use and therefore provide support for the proposal.
12. Based upon the evidence before me, whilst I acknowledge the submissions of the Council with regards to their contention the proposal would result in additional convenience store floorspace as above, the proposed use would be ancillary to the sale of non-food items and would be limited in terms of overall space allocated within the business units for such use. In conjunction with the assessments and reports provided by the Appellant, I therefore conclude that it has been demonstrated that the proposed variation of the relevant condition would not have a significant adverse impact on the viability or vitality of Camborne town centre.
13. The proposed variation, in my view, would not conflict with Policy 4 of the Local Plan and would accord with the provisions of the Framework with regards to ensuring the vitality of town centres. In this instance, I find that the condition would be unnecessary in relation to units 1 and 3B and, therefore, the condition should be replaced with a modified version.
14. Further to the above, whilst I also acknowledge the concerns of interested parties with regards to the number of hot food takeaways within the vicinity of the appeal site, such use would fall under Class A5. However, the proposed use in this appeal concerns Class A1 use and therefore would require a separate change of use application to be submitted in order to fall within a Class A5 use. Consequently, the proposed variation to the relevant condition would not add to the number of Class A5 premises within the vicinity of the appeal site.

Conclusion

15. For the reasons given above, the appeal succeeds as I have found that the disputed condition would be unnecessary in relation to units 1 and 3B. I therefore allow the appeal and delete condition 1, replacing it with a modified version. Furthermore, I have amended the wording of the required plans condition to better reflect current guidance.

A Spencer-Peet

INSPECTOR

Schedule of Conditions

1. Units 1, 2, 3A & 3B (as identified on plan ref. JPW1253-002 shall only be used for the sale of non-food retail goods and any other products which are ancillary to the above product group, with the exception that up to 30% of the floor area in each unit may be used for the sale of food and drink (for consumption off the premises). The use of Unit 4 is subject to permission PA14/08911.
2. The development hereby approved shall in all respects accord strictly with submitted plan number: JPW1253-001 received by the Local Planning Authority on 30 May 2018.